

National Association of



1771 N Street, N.W.
Washington, DC 20036-2891



Independent
Television

Suite 502
1200 18th Street, N.W.
Washington, DC 20036

May 13, 1993

Mr. Roy Stewart
Chief,
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED

MAY 13 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Request for Declaratory Ruling

Implementation of the Cable Television Consumer
Protection and Competition Act of 1992:
Broadcast Signal Carriage Issues
MM Docket No. 92-259, FCC 93-144
(Released March 29, 1993)

Dear Mr. Stewart:

On March 29, 1993, the FCC released its Order in the above referenced matter. While the FCC's rules regarding must-carry, channel positioning and retransmission consent detail the obligations of cable operators and broadcasters, there are several areas which, based on actual experience, need additional explanation. Many cable operators are faithfully complying with the rules, but there are a disturbing number who appear to be misreading the Commission's requirements in an effort to obstruct the implementation process. Pursuant to 47

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in the next few weeks. Moreover, failure to clarify these issues will result in numerous complaints being filed at the FCC. Clarification will reduce the burdens imposed on the agency whose resources are already strained.

Provision of a Good Quality Signal

The 1992 Cable Act requires television stations to provide a -45 dBm (UHF) or -49 dBm (VHF) signal at the input processing terminals of the principal headend of the cable system to be eligible for must carry. The May 3, 1993 notices to broadcasters concerning signal quality were required to: 1) list the equipment used to make initial measurements, 2) contain a description of the reception and over the air signal processing equipment used, including sketches and a description of the methodology used by the cable operator for processing the signal, 3) list the make, model and age of all equipment.³

Unfortunately, many cable operators have used the signal coverage requirement to circumvent or delay implementation of the must carry obligations. For example, cable operators have sent out "form" letters simply stating that there is a signal quality problem without including any information regarding the type of equipment used or the methodologies employed in measuring the signal.⁴ In some instances, it appears that actual measurements have not been taken at all. Others have taken measurements at locations other than the site of the system's normal reception equipment.⁵

Second, in many cases cable operators have taken measurements with inexpensive and non-professional antennas, as opposed to the antennas that cable operators normally use to receive local television signals.⁶ The quality of an antenna is extremely important. For example, higher gain antennas or "notched" antennas specifically designed to receive a station's signal can have a dramatic impact on the signal level received at the input processing terminals. Frequently, precise engineering data for these non-professional antennas does not exist, making it impossible for broadcasters to assess the adequacy of cable system's

³Order at para. 103.

⁴See Exhibit 1.

⁵See Exhibit 2.

⁶See Exhibit 3.

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testing methodology. Moreover, some measurements are taken at elevations lower than the height of the cable system's regular receiving equipment.⁷

Indeed, in some instances the cable system has carried the station in question for years without any complaint about the station's signal quality at the cable headend. Stations have received notices from cable systems that are in close proximity to the station's tower. In one instance a station received a notice from a cable system even though more distant cable systems had no problem with the signal level provided by the station. Certainly, the signal measurement efforts employed by some cable operators do not rise to the level of "good engineering" practices contemplated by the Commission.⁸ Other cable systems appear to be using formulas to make their signal strength determinations, but have refused to disclose those formulas to inquiring stations.

Finally, in some cases, cable operators have engaged in delaying tactics, refusing to discuss technical matters with television stations.⁹ Some of these operators have assumed that if a station is unable to provide an adequate signal by June 2, 1993, then it will be relieved of the obligation to carry the station for the first three year period.

INTV and NAB believe the Order should be clarified as follows:

1. Notices sent by cable operators regarding signal strength problems must include the specific information required by the Commission's Order. If a cable operator failed to include such information in its initial notification, it should be required to provide that information immediately upon request by a television station. Failure to do so should render the initial notice invalid and permit stations to assert and enforce their must carry and channel positioning rights.
2. When measuring signal strength, a cable operator should use the same antenna and receiving equipment normally used by the cable system to receive and process broadcast signals that are currently carried by the cable system.

⁷See Exhibit 4. It appears that some cable operators are proceeding on the assumption that they should employ the testing methods specified in § 73.686 of the Commission's rules. That assumption is incorrect and the Bureau should so state.

⁸See Order at para. 101.

⁹See Exhibit 5.

Signal measurements should be taken by the cable operator at its designated principal headend. The height of the measuring antenna should be the same as that currently used by the cable system to receive broadcast signals.

- 3. Where signal strength appears to be inadequate, engineers from both the cable system and the affected broadcast stations should meet promptly to resolve any dispute. Both the broadcaster and the cable operator should use their "best efforts" to resolve signal carriage problems.**
- 4. If adequate signal strength can be achieved through the use of a higher gain antenna or "notched" antenna, then cable operators should be required to use such an antenna. If a cable operator does not have such an antenna, then it should be supplied by broadcaster. Cable operators should not unreasonably refuse to use such equipment if it is made available to them.**
- 5. In cases where the cable operator is currently carrying the television signal, then cable operators should be required to continue carriage of the station while signal disputes are being resolved. Such stations should be permitted to assert their channel positioning rights on June 17, 1993. This approach is consistent with the Commission's general policy of preserving the status quo while resolving disputes.**
- 6. In situations where a television station has agreed to make signal improvements, provide microwave links or supply antennas, a cable operator should be required to carry the station on the date the signal is provided to the cable system. The FCC should make it clear that stations unable to rectify signal problems by the June 2, 1993 must carry date do not lose their must carry and channel positioning rights for initial three year period.**

Copyright Indemnification

Many cable operators have sent out notices advising stations that the broadcaster must indemnify the cable operator for incremental copyright costs in order to assert must carry rights on the cable system. Unfortunately, most of the notices appear to be "form" letters which do not inform stations of the amount of potential copyright liability.¹⁰

¹⁰**See Exhibit 6.**

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The Order states that it is fair for a cable operator to provide the broadcaster with an estimate of the expected copyright liability based on previous payments and financial information.¹¹ Cable operators are in a unique position to provide stations with this information.

Unfortunately, not only are cable operators not providing this information with their original notices, but stations are having a difficult time obtaining this information from cable operators in follow up requests. As a result, stations are being placed in a position of having to agree to a "blank check" indemnification.

Importantly, providing such data to affected stations does not involve proprietary information. Payments made for the carriage of distant signals are routinely reported to the Copyright Office. These forms are public information. Unfortunately, acquiring the information from the Copyright Office can be a lengthy process.

Obtaining the data is critical to a station's decision to elect must carry or retransmission consent by the June 17, 1993 election date. Absent such information, stations are not in a position to make an informed choice.

INTV and NAB believe the Order should be clarified as follows:

- 1. Stations that have received an indemnification notice should be able, upon written request, to obtain the necessary information from cable systems. Cable systems should be required to respond to such requests promptly.**
- 2. For stations currently carried by a cable system, a cable operator should provide a station with a copy of the form filed with the Copyright Office, for the latest accounting period, detailing the payment made by the cable system for the carriage of the station. The response should also specify the number of distant signals previously carried by the cable operator and the order in which such distant signals were carried. Finally, the cable operator should be required to provide a good faith estimate as to the potential copyright liability for the next accounting period (July 1, 1993 - December 31, 1993) that is associated with carrying the station in question.**
- 3. For stations that have not been carried by the cable system prior to April 2, 1993, the cable operator should provide the broadcast station with a good faith estimate of the potential copyright liability for the**

¹¹**Order at para 114.**

cable system's next accounting period. In addition, a cable operator should provide the station with copies of the forms filed with the Copyright Office for existing distant signal carriage, detailing the payments made by the system for the carriage of distant signals.

4. Cable operators failing to provide such information should be obligated to carry the stations in question. In these instances, stations should not be required to indemnify cable operators until such information is received.

Translator Ownership

The Order states that television stations, otherwise qualified for must carry purposes, may use a translator to deliver a good quality signal to the cable operator's headend.¹² In addition, stations can use microwave links or other technical means of providing a signal to the principal designated headed.

A question has arisen regarding translators or other facilities that are not owned by the television stations. Throughout the inter-mountain west, many translators are owned by communities. Some cable operators have informed television stations that they cannot use a translator to get their signal to the headend, because the station does not own the translator.

The Order does not state that independent ownership of the translator precludes a station from using the translator to get its signal to the input processing terminals of the cable system's principal headend. Ownership of the translator should be irrelevant to the analysis. The only issue is whether the stations is providing a signal to the cable system. INTV and NAB request that the Bureau clarify this issue.

Conclusion


INTV and NAB believe the Bureau should act immediately on this request for clarification. Prompt action is necessary to insure that the implementation process

¹²Order at para. 30.

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moves forward. Delay will only increase the burdens on scarce Commission resources.

Sincerely,


Henry J. Baumann
Executive Vice President &
General Counsel
National Association of Broadcasters


David L. Donovan
V.P. Legal & Legislative Affairs
Association of Independent Television
Stations, Inc.

cc: Chairman James Quello
Commissioner Andrew Barrett
Commissioner Ervin Duggan

EXHIBIT 1

MAY 07 '93

12:57 PM

WYVNFOX60

+3042676180

Page 1



May 7, 1993

FAX TO- DAVID DONOVAN, INTV

FAX NO. 202-887-0950

FROM- JOHN HUMPHREYS, DIRECTOR, VIEWER SERVICE

RAYSTAY CO.



P. O. BOX 38

CARLISLE, PA 17013

(717) 245-0040

BROADBAND COMMUNICATIONS - CATV

April 30, 1993

Via Certified Mail

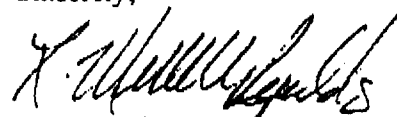
WYVN
Attention: Station Manager
1 Discovery Place
Martinsburg, WV 25401

Dear Station Manager:

This letter is to provide to you pursuant to Section 76.58(d) of the Commission's Rules which requires a system to inform a commercial station or noncommercial station why it may not be entitled to carriage. We hereby notify you that WYVN is not entitled to carriage by TV Cable of Waynesboro, a division of Raystay Co., because it fails to meet the standards for delivery of a good quality signal to the cable system's headends located at Blue Ridge Summit, PA (39° 44' 11"N / 77° 28' 56"W) and at Fort Loudon, PA (39° 53' 00"N / 77° 53' 14"W).

Should you have any questions, or need additional clarification, please contact: Samuel F. Andolina, System Manager, 12708 Pennersville Road, Waynesboro, PA 17268, (717) 794-2141.

Sincerely,



L. Michael Reynolds
Regional Operations Manager

LMR:mch

cc: Sam Andolina

5-6-92 - Requested Measurement Documentation

Enclosure: Person providing information requested in this document is not responsible for the accuracy of the information provided.

*We're taking television
into tomorrow.*



TCI Cablevision of Oklahoma, Inc.
State Office

BY CERTIFIED MAIL

May 3, 1993

**Thomas Kirby
KOCO-TV
1300 E. Britton Rd.
Oklahoma City, OK 73131**

Dear General Manager:

Under the FCC's new must carry rules, we are required to notify you whether there is any signal quality problem or copyright liability affecting your station's potential must carry rights in any of our cable television systems which operate within your ADI. We believe, that in certain of our systems, either one or both of these conditions exist.

The attached Schedule of Systems (headends) provides the following information. If your station is currently carried on a system, there will be a notation of an "x" in the column titled "Carried." If our test of your signal, as it is received over-the-air at the principal headend of a system, has raised questions of its strength and/or quality, an "x" will appear in the column titled "Inadequate Signal." If we have determined that by carrying your station, a system may be subject to increased copyright liability, an "x" will appear in the column titled "Copyright Liability." An "x" in the column titled "Signal/Copyright" notates that both of these conditions exist.

It is our belief that either inadequate signal quality or copyright liability may adversely affect your must carry rights on these systems. If you have any questions, please contact me.

Sincerely,

Steve Murphy
State Manager *bf*

Attachment(s)

COMMERCIAL
SCHEDULE OF SYSTEMS

Cable Television Headend	Latitude	Longitude	Carried	Inadequate Signal	Copyright Liability	Signal/ Copyright
** KOCO						
ALVA, OK	036 45 09N	098 40 00W	X			
BLANCHARD [AML in PURCELL], O			X			
CHANDLER, OK	035 42 04N	096 52 50W	X			
CORDELL, OK	035 18 35N	098 59 19W	X	X		
ENID, OK	036 24 03N	097 52 30W	X			
HOLDENVILLE, OK	035 06 28N	096 23 54W	X			
KODAMA, OK	034 57 38N	096 46 18W	X			
MAID, OK	035 07 55N	096 46 30W	X			
MAYSVILLE [AML in PURCELL], O			X			
NEWKIRK, OK	036 54 20N	097 03 03W	X	X		
NOBLE [AML in PURCELL], OK	035 08 22N	097 23 38W	X			
PURCELL [AML], OK	035 02 25N	097 22 00W	X			
SAYRE, OK	035 18 06N	099 37 35W				X
SEMINOLE, OK	035 12 52N	096 39 29W	X			
STROUD, OK	035 44 50N	096 37 45W	X			
WAYNE [AML in PURCELL], OK	034 55 14N	097 19 01W	X			
WELLSTON, OK	035 41 20N	097 03 55W	X			
WEWOKA, OK	035 09 08N	096 28 42W	X			

SUPPLEMENTAL NOTIFICATION TO CERTAIN COMMERCIAL BROADCASTERS

Note:

- A.** The attachment included with this mailing may identify a signal quality problem in cases where the station is currently carried. It was handled in this manner to address one or more of the following situations:
- 1)** signals are microwaved to the principal headend from a remote site because an acceptable signal is not available off-air at the principal headend, or to improve and enhance the signal or;
 - 2)** a direct studio link is utilized to resolve signal quality issues and/or enhance signal reception, or;
 - 3)** additional processing equipment is used to enhance the signal quality, or;
 - 4)** the station does not deliver a good quality signal to the headend.
- B.** There may be other situations where the station is shown as not carried when the system carries a translator in lieu of the originating situation.

EXHIBIT 2

TRI-COUNTY CABLEVISION

AN INTERMEDIA COMPANY

VIA CERTIFIED MAIL

April 20, 1993

Ms. Colleen Brown
WFMY
P.O. Box TV 2
Greensboro, NC 27420

Re: Notice of STATION'S Ineligibility for Carriage as a Must-Carry Station.

Dear Mr. Brown

In accordance with Section 76.58(d) of the Rule promulgated by the Federal Communications Commission ("FCC") pursuant to Section 4 of the Cable Television Consumer Protection and Competition Act of 1992, a cable operator must notify all local commercial television stations which may not be entitled to carriage because such station either (i) fails to meet the standards for delivery of a good quality signal to the cable system's principal headend, or (ii) such carriage may increase the cable operator's copyright liability.

Per our investigation, we hereby notify you that WFMY is not entitled to carriage because you station fails to meet the standards for delivery of a good quality signal to our principal headend, which is located at the following address: Hwy. 21 at I-77 Yadkin County, NC. In compliance with Section 76.61(a) of the FCC's Rules, attached please find a list of the equipment used to make the signal quality measurements, as well as the point of measurement and a list and detailed description (i.e. make, model and age) of the reception and over-the-air signal processing equipment used to make the initial measurements, including sketches and a description of the methodology used for processing the signal.

Consistent with the foregoing investigation, and pursuant to Section 76.60 of the FCC's Rules, we are not obligated to provide carriage, nor is WFMY entitled to exercise any must-carry rights on Tri-County CableVision's system unless WFMY bears the costs associated with delivering a good quality signal to our principal headend.

Although you are presently ineligible for carriage as a must-carry station under the FCC's Rules, we are currently carrying WFMY. In order to continue carrying your station, we must have your retransmission consent. Attached is a form which we have prepared for that purpose. If you will execute this form and return it to us, we will, at our discretion, continue to carry WFMY with your consent to do so.

TRI-COUNTY CABLEVISION

AN INTERMEDIA COMPANY

EQUIPMENT AND METHODOLOGY USED FOR PROCESSING SIGNAL STRENGTH

EQUIPMENT

Wavetek SAM 1000 Field Strength Meter
VU-190 antenna
300/70 Ohm transformer
20' antenna mast
100' length of RG-6 cable with F-connectors
Magnovox color television set

PROCEDURE

A location approximately 80' from our headend building and tower was used to avoid any false readings. The antenna was mounted atop the 20' antenna mast, with the 300/75 Ohm transformer and the 100' length of RG-6 cable connected to the antenna and then to the Wavetek SAM 1000 Meter.

The mast was held vertically as the meter was tuned to the station and the antenna was rotated to obtain the highest signal strength reading possible. After the measurement was recorded, the signal was then observed on the Magnovox television set to try and determine if the picture quality had any electrical noise, ghosts, co-channel, low modulation, hum or any other visual interference).

LOCATION: Hwy. 21 near I-77
Yadkin County, NC

<u>STATION</u>	<u>DATE</u>	<u>TIME</u>	<u>MEASUREMENT IN dbm</u>
WFMY	4/15/93	10:00am	-45.2 Dbm (ghosting)

EXHIBIT 3



**WARNER CABLE
COMMUNICATIONS**

A Division of Time Warner
Entertainment Company, L.P.

120 Industrial Drive, P.O. Box A
Chambersburg, Pennsylvania 17201 717/263-8591

39 Channel System

April 29, 1993

W Y V N
Ms. Carol LaFever
1 Discovery Place
Martinsburg, WV 25401

Dear Ms. LaFever:

This letter is being sent to you pursuant to the provisions of Section 76.58(d) (1) of the Rules of the Federal Communications Commission and constitutes notice that the signal of Station W Y V N fails to meet the FCC standards for delivery of a "good quality signal" to our principal headend. The relevant threshold signal level for your Station is -45 dBm.

On April 27, 1993, we measured the signal of Station W Y V N at our principal headend. The measure signal level at the input terminals of our signal processing equipment was -47.19, 2.19 dBm below the FCC's threshold of -45 dBm.

In measuring the Station's signal strength, we used the following test equipment:

	<u>Field Strength Meter</u>	<u>Antenna</u>
Make:	Wavetek	Radio Shack
Model No.:	Sam III	UV 190
Year:	1985	1992

One technician rotated the antenna to achieve maximum reception while the second recorded the signal levels. Attached is a sketch including further details of our methodology.

We are prepared to discuss our findings with you at a mutually-convenient time. Please contact the undersigned with any questions concerning this notice or the tests.

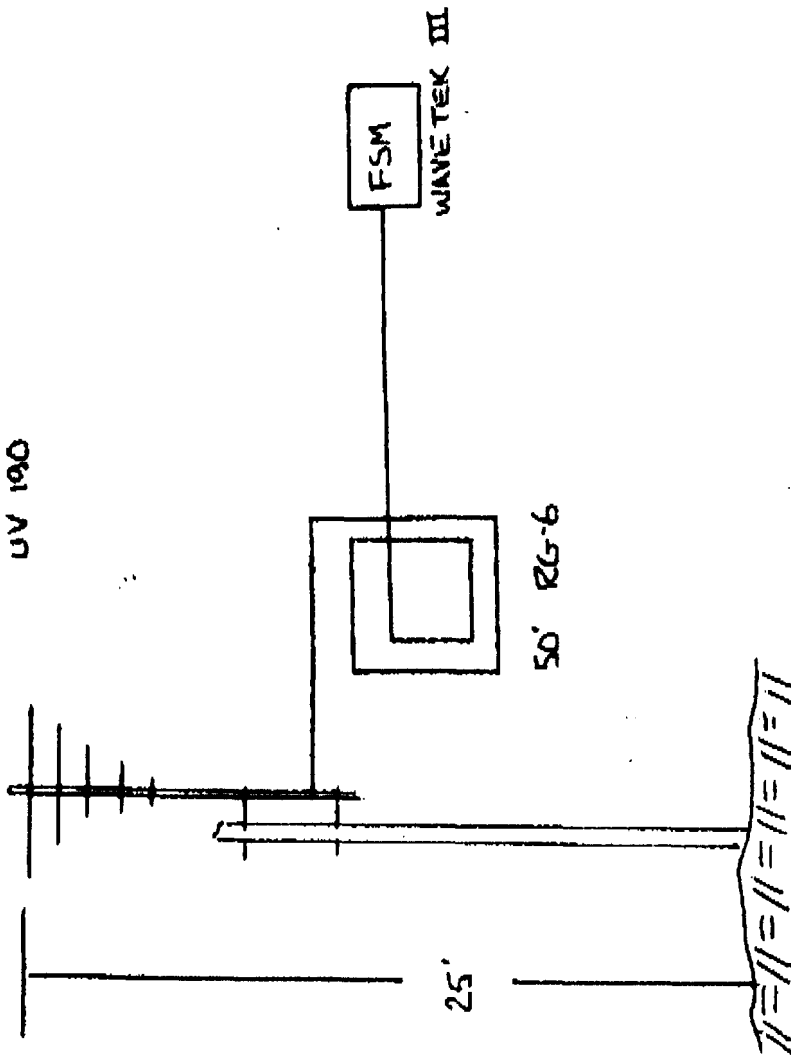
Sincerely,


Samuel K. Schultz, Jr.
Samuel K. Schultz, Jr.
General Manager

SKS/jle

Enclosure

RADIO SHACK ANTENNA
UV 190

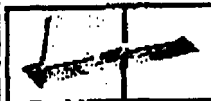


DATE		SYSTEM		PROJECT NO.		ON SYSTEM MAP NO.		SCALE		DATE		SHEET		SHEETS	
DESIGNED BY		DRAWN BY		CHECKED BY		APPROVED BY		DATE		DATE		NO.		OF	
<div style="display: flex; justify-content: space-between; align-items: center;"> <div>  <p>WARNER CABLE A WARNER COMMUNICATIONS COMPANY</p> </div> </div>															

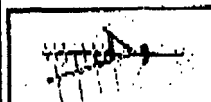
(WYVN INSERTED PAGE)

AMERICA'S FAVORITE TV/AM ANTENNAS

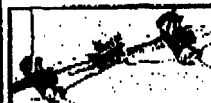
**Built Better
To Last Longer**



High Tensile-Strength
Aluminum for Long Life



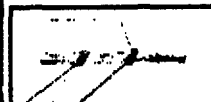
UHF Yagi and Corner
Reflector Combination



Strong Square Boom
With "No-Tilt" Clamp



Snap-Open Elements
For Easy Installation

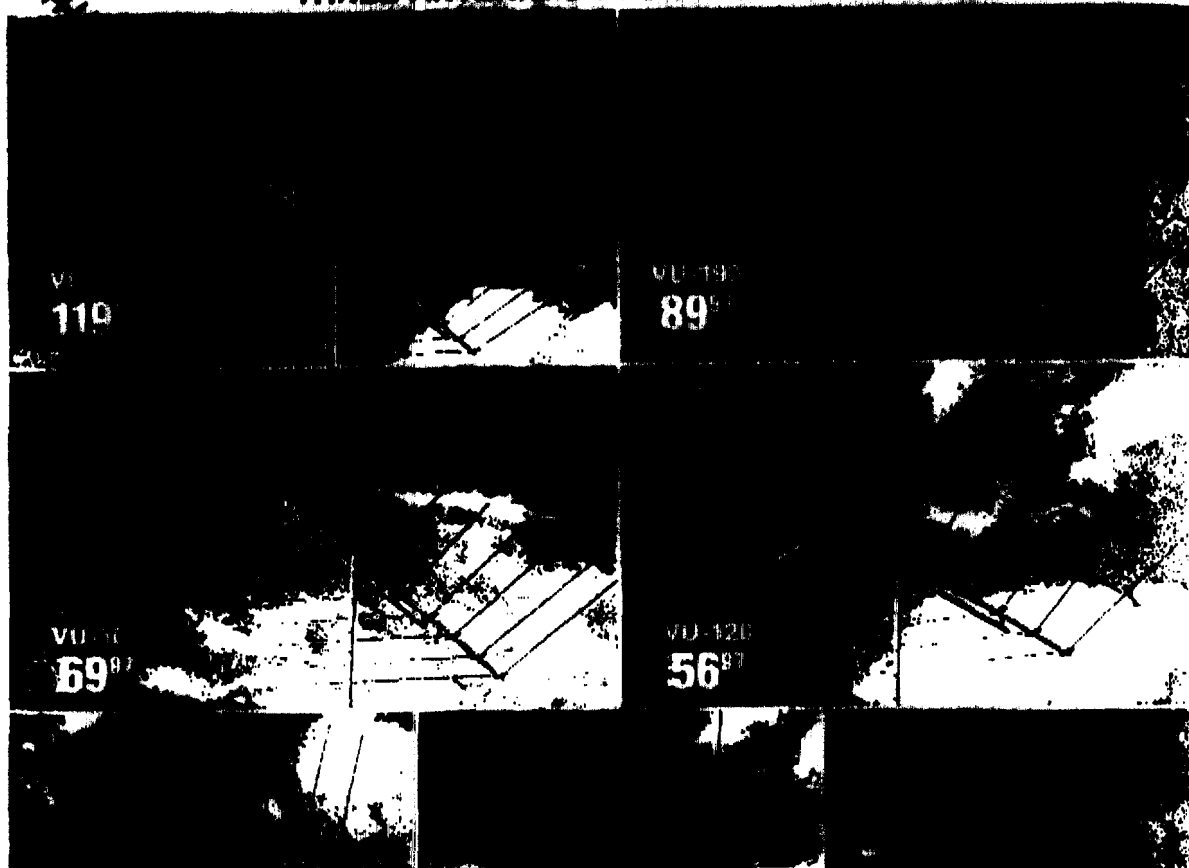


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05-07-1993 12:58

2022441547

W*USA-TV ENGINEERING

P.06

Received
5/3/93

CABLEVISION

April 30, 1993

VIA CERTIFIED MAIL

WFMY

Attn: Colleen Brown

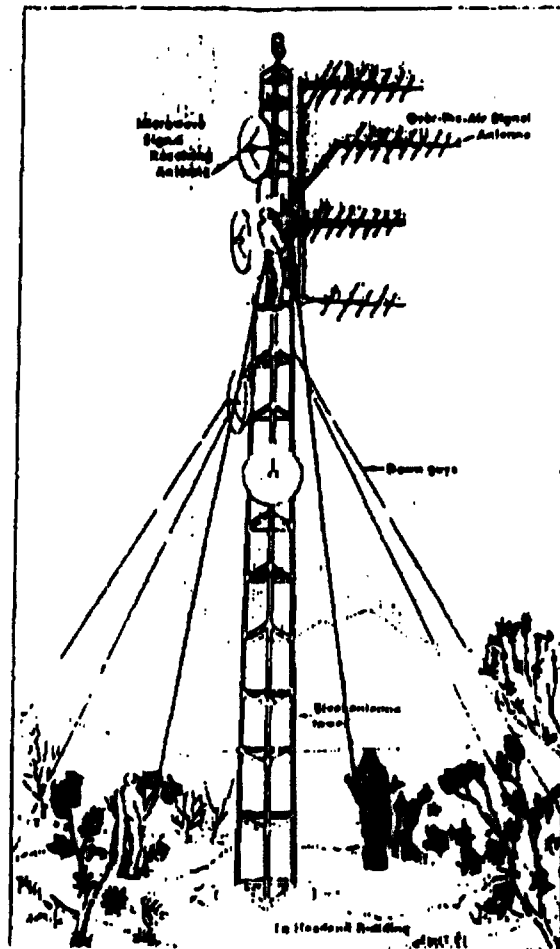
P.O. Box TV 2

Greensboro, NC 27420

ATTACHMENT A

Your station's signal was measured at a level below -45 dBm (UHF) or -49 dBm (VHF) at

1





April 29, 1993

Mr. Ralph Albertazzie
General Manager
WYVN
1 Discovery Place
Martinsburg, WV 25401

RE: MUST-CARRY STATUS OF WYVN ON CABLE SYSTEM LOCATED IN Front
Royal, Virginia

Dear Mr. Albertazzie:

On behalf of Central Virginia Cable, Inc., d/b/a Adelphia Cable Communications, the franchised cable television operator in Front Royal, Virginia, this letter is provided to you pursuant to Section 76.58 (d) of the Commission's Rules which requires a system to notify a local commercial station or noncommercial educational station why it may not be entitled to carriage under must-carry regulations. We hereby notify you that WYVN is not entitled to carriage as a must-carry station on the above-referenced system for the following reason(s):

It fails to meet the standards for delivery of a good quality signal to the cable system's principal headend. Refer to attached exhibit which shows how we arrived at this decision;

and

It may cause an increased copyright liability to the cable system.

If you have any questions on the above information, please contact the undersigned.

Sincerely,

Randall D. Fisher / K-S

Randall D. Fisher
General Counsel

cc: Richard Burke
Michael Rigas
John Glicksman

c:\wp51\re-reg\mailform.pf1